Akberdin bin Hj Abdul Kader & Anor v Majlis Peguam Malaysia

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-04-135 OF 2001
GOPAL SRI RAM, ABDUL KADIR SULAIMAN AND ALAUDDIN JJCA
8 NOVEMBER 2002

Legal Profession — *Practice of law — Chambering pupil — Qualification of master — Master to have been in active practice for a total period of not less than seven years — 'Active practice', definition of — Seven year period, how calculated — Legal Profession Act 1976 s 13(1)*

Statutory Interpretation — *Construction of statutes — Purposive approach — Whether the purposive approach represents the modern approach to statutory interpretation — Purpose of statute to protect the public from incompetent members of the legal profession — Whether intention of Parliament would be defeated if a provision of such statute literally interpreted — Legal Profession Act 1976 s 13(1)*

Words and phrases — *Legal Profession Act 1976 s 13(1) — 'Active practice'*

The first appellant was called to the Bar on 1 March 1991. Soon after that he joined the Judicial and Legal Service as a magistrate for six years. Thereafter he resigned and returned to private practice. The second applicant, intending to practise law, served her period of pupillage in the first applicant's chambers. She was eventually admitted to the Bar as an advocate and solicitor. After her admission the Bar Council realized that the first appellant was not qualified to take on a pupil. The appellants, wanting their position declared as being legal, sought several declarations in the High Court. The main thrust of these declarations was that the first appellant was in 'active practice' for seven years from the date of his call to the Bar. The High Court dismissed the application for such declarations and the appellants appealed. In the Court of Appeal, the appeal mainly concerned the construction of the phrase 'active practice' in s 13(1) of the Legal Profession Act 1976 ('the Act'). Counsel for the appellants argued that the provision should be interpreted literally.

Held, dismissing the appeal:

(1) The approach to the interpretation of the Act should be purposive. Counsel for the appellants had conceded that the purpose of the Act is to protect the public from incompetent profession. Once it is accepted that the Act is there to protect the public, a literal interpretation to s 13(1) could not be applied as that would defeat the intention of Parliament (see p 4I–5A).

(2) The modern approach to statutory interpretation is purposive not literal. The High Court judge did in fact adopt the correct approach by applying a purposive construction to s 13(1). The Court of Appeal would agree with his conclusion (see p 5A,

C–D); *Samantha Murthi v Attorney-General, Malaysia & Ors* [1982] 2 MLJ 126 distinguished and *Pepper v Hart* [1993] 1 All ER 42 followed. A

(3) The phrase 'active practice' in s 13(1) of the Act refers to a total period of seven years from the date of an advocate and solicitor's admission and enrollment to the date upon which he is qualified to take on pupils, that is at the end of seven years from the date of his admission and enrollment. On the facts, the first appellant did not satisfy the test (see p 5D–E). B

[Bahasa Malaysia summary C

Perayu pertama telah diterima masuk sebagai seorang peguam oleh Majlis Peguam pada 1 Mac 1991. Tidak lama selepas itu, beliau telah menyertai Perkhidmatan Kehakiman dan Undang-Undang sebagai seorang majistret selama enam tahun. Selepas itu, beliau telah meletak jawatan dan kembali kepada amalan swasta. Pemohon kedua, yang berhasrat bekerja sebagai seorang peguam, telah menjalankan tempoh latihan sebagai murid undang-undang dalam kamar pemohon pertama. Beliau akhirnya diterima masuk Majlis Peguam sebagai seorang peguambela dan peguamcara. Selepas kemasukannya Majlis Peguam sedar bahawa perayu pertama tidak layak mengambil seorang murid. Perayu-perayu, yang ingin kedudukan mereka diisytiharkan sah, memohon pelbagai perisytiharan di Mahkamah Tinggi. Teras perisytiharan-perisytiharan ini adalah bahawa perayu pertama berada dalam 'active practice' selama tujuh tahun dari tarikh beliau diterima masuk sebagai peguam Majlis Peguam. Mahkamah Tinggi menolak permohonan untuk perisytiharan sedemikian dan perayu-perayu mengemukakan rayuan. Di Mahkamah Rayuan, rayuan pada dasarnya adalah berkenaan tafsiran ungkapan 'active practice' dalam s 13(1) Akta Profesyen Undang-Undang 1976 ('Akta tersebut'). Peguam bagi pihak perayu-perayu berhujah bahawa peruntukan tersebut harus ditafsirkan dengan cara harfiah. D E F G

Diputuskan, menolak rayuan tersebut:

(1) Pendekatan yang diambil terhadap tafsiran Akta tersebut haruslah 'purposive'. Peguam untuk pihak perayu-perayu telah mengakui bahawa tujuan Akta tersebut adalah untuk melindungi masyarakat awam daripada ahli-ahli profesyen undang-undang yang tidak kompeten. Sebaik saja ia diterima bahawa Akta tersebut wujud untuk melindungi masyarakat awam, tafsiran harfiah kepada s 13(1) tidak boleh dipakai kerana ini akan menewaskan hasrat Parlimen (lihat ms 4I–5A). H

(2) Pendekatan yang moden terhadap tafsiran berkanun adalah 'purposive', bukan harfiah. Hakim Mahkamah Tinggi memang telah menerimapakai pendekatan yang betul dengan memakai tafsiran 'purposive' kepada s 13(1). Mahkamah Rayuan bersetuju I

dengan kesimpulan beliau (lihat ms 5A, C–D); *Samantha Murthi v Attorney-General, Malaysia & Ors* [1982] 2 MLJ 126 dibeza dan *Pepper v Hart* [1993] 1 All ER 42 diikut.

(3) Ungkapan 'active practice' dalam s 13(1) Akta tersebut merujuk kepada jumlah jangkamasa selama tujuh tahun dari tarikh kemasukan dan pendaftaran seorang peguambela dan peguamcara hingga tarikh di mana beliau layak mengambil murid, iaitu selepas tamatnya tujuh tahun dari tarikh kemasukan dan pendaftaran beliau. Berdasarkan fakta-fakta, perayu pertama tidak memenuhi kehendak tersebut (lihat ms 5D–E).]

Notes

For cases on chambering pupil, see 9 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1633–1637.

For cases on purposive approach, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1538–1563.

Cases referred to

Pepper v Hart [1993] 1 All ER 42 (folld)

Samantha Murthi v Attorney-General Malaysia & Ors [1982] 2 MLJ 126 (distd)

Legislation referred to

Legal Profession Act 1976 ss 3, 13(1), (3)(d)

Appeal from: Originating Summons No R1–17 of 2001 (High Court, Kuala Lumpur)

KK Wong (*Akberdin & Co*) for the appellants.

Hj Sulaiman Abdullah (*Zain & Co*) for the respondent.

Gopal Sri Ram J (delivering judgment of the court): This appeal raises a short issue of statutory construction. The provision in question is s 13(1) of the Legal Profession Act 1976 ('the Act'). That section reads as follows:

> Subject to subsection (4) a pupil shall serve his period of pupillage with an advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately preceding the date of commencement of his pupillage:
>
> Provided that the Bar Council may on special grounds allow a pupil to serve his period of pupillage with an advocate and solicitor of less than seven years' standing.

The factual background against which the interpretive question arises may be shortly stated.

Encik Akberdin is an advocate and solicitor of these courts. He was called to the Bar on 1 March 1991. Soon after that he joined the Judicial and Legal Service. He was a magistrate. He served as a magistrate in

Kuala Lumpur for six years. Thereafter, he resigned and returned to private practice. A

Cik Faradinah bte Abu Bakar is a graduate of the International Islamic University. She obtained her degree in 1998. She wished to practise law. She went to En Akberdin's chambers. He took her on as his pupil. In due course, she completed the formalities. At the end of the first statutory period, she obtained an order permitting her to appear before the subordinate courts and in the chambers of a judge. The profession calls this a 'short call'. Eventually, her petition to be admitted to the Bar was heard. She was admitted as an advocate and solicitor. After the date of admission, the Bar Council realized that En Akberdin was not qualified to take on a pupil. Both En Akberdin and his pupil wanted to have their position declared as being legal that is to say, as being within the law. So, they instituted proceedings in the High Court at Kuala Lumpur asking for several declarations. The main thrust of these declarations was that En Akberdin was in the words of the statute, 'in active practice' for the required period, namely seven years from the date of his call to the Bar. If he was right in that assertion, then Cik Faradinah was properly called to the Bar. The application for declarations came before the learned judge of the High Court who in a very careful judgment examined the contentions advanced on behalf of the plaintiffs (the appellants before us). We will mention these contentions briefly. They were repeated before us. This is how the appellant counsel, Mr KK Wong, put his case. B C D E

The Act is constructed in such a fashion that it draws a distinction between three separate and distinct categories. First, an advocate and solicitor is defined in s 3 of the Act. Next, there is s 13(1) which employs the phrase 'advocate and solicitor who is and has been in active practice'. Thirdly, s 13(3)(d) of the Act uses the expression 'engaged in active practice as a legal practitioner'. Mr Wong's argument is that these three expressions mean different things. In support of his argument, he has referred us to and relied on the judgment of Suffian LP in *Samantha Murthi v Attorney-General, Malaysia & Ors* [1982] 2 MLJ 126. In that case, the Federal Court when dealing with the definition of an advocate and solicitor under s 3, held that an advocate of the Bar of the State of Sarawak could be a pupil master or 'an advocate' for the purposes of the Act. While we entirely agree with that decision — indeed it is binding on us — we find its relevance to the present case a little dubious. F G

It is to be immediately appreciated that the foundation of Mr Wong's argument is the literal approach. He says that when the section, that is to say s 13, is interpreted literally, then En Akberdin is qualified to act as a pupil master because his active practice should include the six years he was a magistrate. The learned judge rejected that contention. We agree with him and we would do likewise. H

In our judgment, the approach to interpretation of the Act should be purposive. Indeed, Mr Wong readily conceded in his argument before us yesterday that the purpose of the Act is to protect the public from incompetent members of the legal profession. Once it is accepted that the I

Act is there to protect the public, then we cannot in the present case accede to the invitation to apply a literal interpretation to s 13(1) because that would defeat the intention of Parliament.

Additionally, we observe that the modern approach to statutory interpretation is purposive not literal. Indeed, the abandonment of the literal approach these days is evidenced by the speech of Lord Griffiths in *Pepper v Hart* [1993] 1 All ER 42. This is what his Lordship said at p 50 of the report:

> The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.

Although the learned judge did not say so in so many words, he did in fact apply a purposive construction to the language of s 13(1). He, therefore adopted the correct approach and, as we have earlier said, we are in agreement with him on his conclusion.

To make the matter clear beyond doubt, we would say this. The phrase 'active practice' in s 13(1) refers to a total period of seven years from the date of an advocate and solicitor's admission and enrollment to the date upon which he is qualified to take on pupils, that is at the end of seven years from the date of his admission and enrollment. On the facts, En Akberdin does not satisfy the test.

For the reasons already given, this appeal fails.

Appeal dismissed.

Reported by Andrew Christopher Simon